

Following the Rulings of the Rambam: A Recent Discussion of Consistency in Deciding Halakhah

In response to a recent article on the topic of *tabarat ha-mishpahah* published on the website, a certain *rav* objected to my use of the Mishneh Torah in coming to halakhic conclusions. Among other things, relying on the Rambam obviates the need for either invasive internal *bedikot* or the use of a *mokh*. Citing the common Haredi claims that “we don’t pasken like the Rambam” and “we follow the Shulchan Aruch,” this *rav* attempts to invalidate my conclusions for anyone but those who happen to be traditional Yemenites, a conclusion which I vigorously oppose.

The discussion of these issues is central to understanding the gap that divides Mekoriut (and the classical Sefardic approach) from the Haredi world, and clearly displays the halakhic double-standards inherent in that position.

Below are his objections along with my written replies.

Comment:

“Unfortunately, for most Ashkenazim and many Sefaradim we do not pasken like the Rambam. We follow Shulchan Aruch and Rema, who both hold that a *bedika* must be an internal exam and not just a surface wipe.

I have no comment on your other suggestions.

There is a practical piece of advice that makes *bedikot* less abrasive. Wet the *bedika* cloth before inserting it. That significantly reduces the abrasiveness. So I have been told by women.”

Response #1:

ל"ק

Shalom, [name removed].

Thanks for writing.

What you have written is simply untrue for the following reasons:

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1. Ashkenazim and Sefaradim do not simply “follow Shulhan Arukh and Rema.” For example, both the Mehaber and the Rema hold of Rabbenu Tam’s 72 minute *shekiab*,¹ yet most Ashkenazim – and indeed nearly the entire Jewish world – follow the Gra and the *shitab* of the Geonim instead. Then there are Ashkenazim who follow the Mehaber against the Rema, and there are Sefaradim who follow the Rema – especially *le-kula* – against explicit statements of the Mehaber to the contrary. The fact of the matter is that Ashkenazim and Sefaradim follow the Rema and the Shulhan Arukh, except for when they follow the Gra, the Shakh, the Taz, the Peri Megadim, the Mishnah Berurah, the Arukh HaShulhan, the Maharsha, Rav Akiva Eiger, or some other *posek* instead. Then there are *posekim* who rule in accordance with various Rishonim and Aharonim – or even the Gemara – against the codified rulings in the Shulhan Arukh, setting it aside altogether.

2. The idea that “we don’t pasken like the Rambam” is a **myth**. In fact, close to 90% of the Mehaber consists of citations taken directly from the Rambam. And the Rema, in his glosses, sometimes cites the Rambam’s other works *le-halakhah* as well. However, even if this wasn’t the case, there is no such rule and never has been. In fact, if what you say is true, then the Ashkenazim and Sefaradim who are relying almost solely on the Rambam’s formulation of “*serarah*”² to prohibit women from serving in synagogue or community positions have no basis for their contentions. I challenge you to write these rabbis and enlighten them to this apparently firm rule, that we are unable to decide *halakhah* in accordance with the Rambam. But you won’t, because there is no such rule against deciding in accordance with the Rambam.

Just like there was nothing stopping Rav Mosheh Feinstein (z”l), Rav Yosef Messas (z”l), Hakham Ovadia Yosef (z”l), the Rogatchover Gaon (z”l), and many others from setting aside the Shulhan Arukh and the Rema, there is also nothing stopping modern *posekim* from deciding in accordance with what I have written here (translated, actually).³ Rav Nahum Rabinovitch, Rav Ratzon Arussi, and others - may they live and be well - currently and routinely decide *halakhah* from the Rambam.

But even if none of these *posekim* ruled like the Rambam – the Rambam ruled like the Rambam. And the author of the Shulhan Arukh, Rav Yosef Karo, unequivocally referred to the Rambam as “the greatest of the halakhic decisors” (cf. Avkat Rokhel #32), and wrote in the Kesef Mishneh that one could absolutely rely on the rulings of the Rambam, despite objections to the contrary.⁴

The amorphous “we” that is constantly referenced in the orthodox world is a sham. There is no homogeneous, monochromatic group of Jews who only follow this or that *posek*, and I tire of those who try and baselessly give the impression that there is.

¹ cf. Shulhan Arukh, *Orah Hayim* 261:2

² cf. Mishneh Torah, *Hil. Melakhim Umilhamot* 1:5

³ <https://forthodoxy.org/2017/03/30/hefsek-taharah-and-bedikot-important-mekori-information-for-women/>

⁴ cf. Rav Yosef Karo, Kesef Mishneh, comment in response to the *hasagah* of the Ra’avad at the end of the *hakedamah* to the Mishneh Torah.

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Mori Yusef Qafih (z"l) wrote that women from any tradition (Ashkenazi, Sefaradi, Yemenite, or what have you) are at liberty to follow the Rambam's rulings regarding *tabarat ha-mishpabah* without even the need for *hatarat nedarim*.⁵

I'm sorry, ahi, but this information is good and valuable – for any Jewish woman who desires to follow it.

Kol tuv,

YB

Rejoinder:

“Poor choice of wording on my part. Certainly there is no absolute rule.

And you show your hand in your closing statement. You pasken like Rav Kapach. Most don't follow him in his feeling that anyone can pasken like Rambam if they so choose.

And if one would hold like the Rambam then consistency would dictate that he or she not use an *eruv* unless it is within a walled area where there is more physical barrier than *tzurat hapetach*.⁶

Otherwise the person is just cherry picking *kaulot*.”

Response #2:

ל"ק

Shalom again, [name removed].

Thanks for your response.

Respectfully, I don't “pasken like Rav Kapach.” However, I do respect him as one of the greatest *posekim* of recent times, which indeed he was. Hakham Ovadia Yosef (z"l) used to learn regularly with Mori Yusef Qafih (z"l), and until his own passing would eulogize him every year on the anniversary of his death. His towering greatness notwithstanding, I find that I regularly disagree with his opinions on various points of *halakhab*. I do so comfortable in the knowledge that were he to still be alive, he would protect my right to see things as I do, since in his humility he regularly protected his detractors against criticism.

⁵ cf. *Hil. Isurei Bi'ab* 11:12, *be'arab* #26

⁶ צורת הפתח - *tzurat ha-petach* means “the form of a doorway,” which halakhically consists of two doorposts and a lintel - []

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No, most don't hold like him that one may follow the rulings of the Rambam if they so choose, but this is irrelevant. Most didn't follow Hakham Ovadia in his method of *pesak halakhab*, and neither do most follow the Gra in his method of *pesak halakhab*, etc. The fact is that the majority of people don't follow the majority of people in following any one *posek* or code of Talmudic law over all others. Beside this, what "most" choose to follow or not follow is practically irrelevant. The significance of a majority only applies within the context of a *beit din* when there is not unanimity among the *hakhamim* serving on it. Outside of this, an appeal to a "majority" is just another way of trying to present the orthodox world as a homogeneous, monochromatic group of Jews who only follow this or that *posek* – which it certainly isn't.

I have heard the contention of a supposed need for strict consistency numerous times, especially when it comes to those who desire to rely on the Rambam, and it's bogus. First of all, you assume (as many understandably do) that the particular reading of the Rambam by the Bet Yosef with regard to *erwin* is correct. Mori Yusef Qafih (z"l) brings a myriad of proofs for this **not** being the case, not the least of which being that the Ra'avad – who held, like every other *rishon*, that an *eruv* comprised of *tzurot ha-petah* is *mo'il* – wrote **no** *hasagot* to the relevant sections of the Mishneh Torah, strongly indicating that he did not read the Rambam as the Bet Yosef did either.

Rav Qafih personally held, based squarely on the Rambam, that the *erwin* of the Rabbanut – composed many times entirely of *tzurot ha-petah* – are a valid *eruv* and may be used by anyone for purposes of either carrying on Shabbat or in dividing one's fields. And before you object on the basis that I am simply "paskening like Rav Kapach" again, I would remind you that the Rambam is regularly cited in thousands of *teshuvot* by people who neither follow everything he says nor ascribe to one particular reading of the Mishneh Torah. In fact, I regularly read where a *posek* or an author will cite "the Rambam, according to the understanding of [Rav Ploni]" – and this brings me to my next point.

Since when is there a rule that in order to follow the Rambam, or any *posek*, that one must be utterly consistent? There is no such rule. Do you hold the Rosh as being somehow inconsistent because in commenting on the Rif, he did not follow him in every detail of *halakhab*? How about the Rambam himself – did he make a mistake because departed from the Rif as well? In fact, this entire assertion is fallacious since, as I said before, there are Ashkenazim who follow the Mehaber against the Rema, and there are Sefaradim who follow the Rema – especially *le-kula* – against explicit statements of the Mehaber to the contrary. As I said before, the brute fact of the matter is that Ashkenazim and Sefaradim follow the Rema and the Shulhan Arukh, except for when they follow the Gra, the Shakh, the Taz, the Peri Megadim, the Mishnah Berurah, the Arukh HaShulhan, the Maharsha, Rav Akiva Eiger, or some other *posek* instead. Even those who hold up the Mishnah Berurah as the final arbiter of *halakhab* don't follow everything dictated in it – many times "cherry-picking" lenient rulings from modern *posekim* who rule otherwise.

Where is the consistency? Why aren't those who follow the Shulhan Arukh held to the same standard of consistency? And if you have in mind the statement of the Tosefta in *Ednyyot* (2:3) that "one who takes

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Besides, it has already been established for us that חמירא סכנתא מאיסורא,¹⁰ so it should be very easy for us to utilize those halakhic rulings which best preserve the health and well-being of women.

Kol tuv,

YB

¹⁰ חמירא סכנתא מאיסורא - *bamira sakanta me-isura* (“an imminent danger is more severe than a prohibition [of the Torah]”), i.e. a majority should not be followed to be lenient in matters related to physical health and the preservation of human life.